Supreme Court, U.S.
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No. 91-1308

In The Supreme Court of the United States October Term, 1991

CONTINENTAL CASUALTY COMPANY,
Petitioner,

v.

UNR INDUSTRIES, INC., UNARCO INDUSTRIES, INC., UNR, INC., UNR-ROHN, INC. (ALABAMA), UNR-ROHN, INC. (INDIANA), JOBAL TUBE CO., INC., UNR PRODUCTS, INC., LEAVITT STRUCTURAL TUBING CO., and FOLDING CARRIER CO.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF

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Contrary to respondents' assertion, the Seventh Circuit's decision does not merely present state law issues construing an insurance contract, but raises important federal and constitutional questions.

Respondents argue that the Seventh Circuit did not expand the bankruptcy court order to effect any change in the contract language or the insurer's obligations under its policy. That is incorrect because both the reasoning of, and the result reached by the Seventh Circuit depend upon its holding that petitioner — which was not a party nor a creditor in the bankruptcy

proceedings — is bound by the bankruptcy court's estimation of the aggregate value of all personal injury tort claims against respondents.

If all the Seventh Circuit had done was to interpret contract language in the context of an order confirming a reorganization plan, it would have gone no further than to hold that the bankruptcy order was a "settlement or judgment." However, the decision did not stop there.

By taking the next step, in holding that petitioner was bound by the estimated value of all personal injury tort claims (as augmented by the Seventh Circuit),[1] it improperly expanded the effect of the bankruptcy court's confirmation order. This holding then raises the questions presented in the petition including, *inter alia*: 1) whether a bankruptcy court has jurisdiction under Article III and the Bankruptcy Code to issue an order which binds a person who is not a creditor of the debtor nor a party to the bankruptcy proceedings and did not consent to jurisdiction; and 2) whether such persons can be bound to an estimation of value of personal injury tort claims which is not an adjudicated fact even as to respondents and their creditors.

The Seventh Circuit introduced these jurisdictional issues by its decision. Contrary to respondents' assertion (Brf. at 11),

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[1] The bankruptcy court never estimated the "real value" of the personal injury tort claims to be $254.0 million. That computation first appeared in the Seventh Circuit opinion in this case, and was based on an extrapolation by the Seventh Circuit from a formula which UNR negotiated with its creditors (App. 6a).

Respondents' position before the district court was that the stock was worth $130.0 million (Doc. 2059 (UNR Reply Memo in Support of SJ) p. 1, the "reorganization imposes a legal obligation on UNR to transfer into trust over $130 million in stock in settlement of the asbestos-disease claims").

Respondents' position in the Seventh Circuit was that the value of the stock had increased by $20.0 million (UNR Reply Brf. at 4, "UNR's transfer of more than $150 million in stock unquestionably qualifies for reimbursement under the CNA policy").

The Seventh Circuit then increased the latter amount by $104.0 million and made a finding of fact that this $254.0 million was the "real value" of the personal injury tort claims transferred to the trust for resolution (App. 6a).

petitioner addressed these issues at the first opportunity, in its petition for rehearing (Pet. Reh. at 1, 3-4, 9).[2]

Respondents correctly assert that the circuit court decisions which conflict with the Seventh Circuit's do not involve insurance contracts (Brf. at 13-14 n. 9). The constitutional and statutory limitations on bankruptcy jurisdiction do not evaporate simply because an insurance contract is involved.

Respondents misconstrue petitioner's argument by claiming that petitioner is challenging a bankruptcy court's right to estimate and allow claims, approve settlements among creditors and debtors, and supervise and adopt reorganization plans (Brf. at 6, 12). Of course these are functions of a bankruptcy court, and petitioners never challenged them. However, a bankruptcy court may not issue final orders estimating the value of personal injury tort claims that bind a debtor's debtor (or, in this case, a potential indemnitor) which is not a party nor creditor, and which did not consent to bankruptcy jurisdiction.

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[2] For example, one of the suggestions for rehearing in banc was: "May the bankruptcy court determine the value of bodily injury claims over which it does not have jurisdiction and bind a non-party, the insurer of the debtor?" (Pet. Reh. at 1).

CONCLUSION

For these reasons and the reasons in the petition, petitioner Continental Casualty Company respectfully requests this Court to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered on August 29, 1991 and the denial of the petition for rehearing entered on October 3, 1991.

Respectfully submitted,

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